

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Leping Huang

Title: BLUETOOTH PERSONAL AREA  
NETWORK ROUTING PROTOCOL  
OPTIMIZATION USING CONNECTIVITY  
METRIC

Appl. No.: 10/606,437

Filing Date: 6/25/2003

Examiner: Christine Y. Ng

Art Unit: 2416

Confirmation 6335

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants are in receipt of the Notice of Allowance for the above-referenced application. Applicants disagree with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and present the following facts per procedure set forth in 37 C.F.R. § 1.705(d) to support their contention that the patent term adjustment should be 183 days instead of 0 days as calculated by the United States Patent and Trademark Office (USPTO).

The Patent Office determined that the patent was entitled to 0 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 183 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 428 days

(b) Total Applicant delay: 245 days

Final PTA Determination: 183 days

Applicants therefore respectfully request that the patent be accorded 183 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

By 

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Attorney for Applicant  
Registration No. 44,787

Date December 23, 2009

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## Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number:088245-0113  
Application Number:10/606437  
Patent Number:N/A

|              | Event Description   | Event Date | Days from Filing | PTO Days | Applicant Days |
|--------------|---|------------|------------------|----------|----------------|
| Edit Delete  | Application Filing Date                                     | 06/25/2003 | 0                |          |                |
| Edit Delete  | IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO | 08/12/2003 | 48               |          |                |
|              | 14 month From Application date                              | 08/25/2004 | 427              |          |                |
| Edit Delete  | Non-Final Office Action                                     | 10/04/2004 | 467              | 40       |                |
|              | Non-Final Office Action + 3 months                          | 01/04/2005 | 559              |          |                |
| Edit Delete  | Non-Final Office Action Rsp. Rcv'd at PTO                   | 04/07/2005 | 652              |          | 93             |
| Edit Delete  | Non-Final Office Action                                     | 06/29/2005 | 735              |          |                |
|              | Non-Final Office Action + 3 months                          | 09/29/2005 | 827              |          |                |
| Edit Delete  | Non-Final Office Action Rsp. Rcv'd at PTO                   | 11/29/2005 | 888              |          | 61             |
| Edit Delete  | Non-Final Office Action                                     | 02/23/2006 | 974              |          |                |
|              | Non-Final Office Action + 3 months                          | 05/23/2006 | 1,063            |          |                |
| Edit Delete  | Non-Final Office Action Rsp. Rcv'd at PTO                   | 05/24/2006 | 1,064            |          | 1              |
| Edit Delete  | Non-Final Office Action                                     | 06/16/2006 | 1,087            |          |                |
|              | 3 Year Period Starts  | 06/25/2006 | 1,096            |          |                |
| Edit Delete  | Non-Final Office Action Rsp. Rcv'd at PTO                   | 08/29/2006 | 1,161            |          |                |
| Edit Delete  | Final Office Action   | 11/09/2006 | 1,233            |          |                |
| Edit Delete  | Final Office Action Response Received at PTO                | 01/16/2007 | 1,301            |          |                |
|              | Final Office Action + 3 months                              | 02/09/2007 | 1,325            |          |                |
| Edit Delete  | Advisory Action   | 02/20/2007 | 1,336            |          |                |
| Edit Delete  | Notice of Appeal Received at PTO                            | 05/10/2007 | 1,415            |          |                |
| Edit Delete  | Request For Continued Examination (including amendment)     | 07/18/2007 | 1,484            | 388      | 90             |
|              | 3 Year Period Stopped                                       | 07/18/2007 | 1,484            |          |                |
| CLOSE WINDOW | Abn CASES SELECT CASE                                       | 10/12/2007 | 1,570            |          |                |
| Edit Delete  | Non-Final Office Action Rsp. Rcv'd at PTO                   | 01/09/2008 | 1,659            |          |                |
| Edit Delete  | Non-Final Office Action                                     | 04/09/2008 | 1,750            |          |                |
| Edit Delete  | Non-Final Office Action Rsp. Rcv'd at PTO                   | 05/14/2008 | 1,785            |          |                |

|             |   |            |       |
|-------------|---|------------|-------|
| Edit Delete | Non-Final Office Action                                       | 06/23/2008 | 1,825 |
| Edit Delete | Non-Final Office Action Letter Restarting Period for Response | 06/23/2008 | 1,825 |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO                     | 09/23/2008 | 1,917 |
| Edit Delete | Final Office Action   | 12/16/2008 | 2,001 |
| Edit Delete | Final Office Action Response Received at PTO                  | 02/06/2009 | 2,053 |
| Edit Delete | Non-Final Office Action                                       | 03/16/2009 | 2,091 |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO                     | 06/10/2009 | 2,177 |
| Edit Delete | Notice of Allowance   | 09/28/2009 | 2,287 |
|             | Projected Patent Grant Date                                   | 04/06/2010 | 2,477 |
|             |   | Totals:    | 428   |
|             |   | PTA:       | 183   |
|             |   |            | 245   |



Version: 3.02.05

LOGIN: Linda Anderson

IP: 10.24.4.21

Foley &amp; Lardner LLP